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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,169	02/08/2001	Eric P. Orgeron	A99274US (98062.3)	6510
22920	7590	05/17/2004	EXAMINER	
GARVEY SMITH NEHRBASS & DOODY, LLC THREE LAKEWAY CENTER 3838 NORTH CAUSEWAY BLVD., SUITE 3290 METAIRIE, LA 70002			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/779,169	<b>Applicant(s)</b> ORGERON ET AL.	
	<b>Examiner</b> David J Parsley	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9, 18-24 and 26-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 18-24 and 26-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's response dated 12-1-03 and this action is final.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-24, 26-27, and 31-34 are rejected under 35 U.S.C. 1021) as being anticipated by U.S. Patent No. 3,543,430 to Brokaw.

In regards to claim 18, Brokaw teaches a fishing lure (2c) for use in water with a fishing line comprising an artificial bait body (unnumbered) having a tail (10) and a weighted tube means (50) in the body for allowing a line (14) to pass from the tail (10) of the artificial bait body (unnumbered) through the tube means (50) and for causing the artificial bait body to be at a level position in the water while hanging on a fishing line – see for example figure 4.

Regarding claim 19, Brokaw discloses a fishing lure (2c) further comprising a line (14) passing from the tail (10) of the artificial bait body (unnumbered) through the

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weighted tube means (50).

In regards to claim 20, Brokaw teaches a fishing lure (2c) wherein the artificial bait body (unnumbered) has a head (8). The lure (2c) also has a weighted tube means (50) in the artificial bait body (unnumbered) positioned forward of the tail (10), generally in between the head (8) and the tail (10). The lure further comprises a flexible fishing line (14) or leader having first and second ends (unnumbered). The first end of the fishing line (14) is attached to the tail (10) of the artificial bait body (unnumbered) and the line (14) passes through the weighted tube means (50) wherein the second end of the fishing line (14) is connected to a fishing reel or to a length of fishing line wound upon a reel.

Regarding claim 21, Brokaw discloses a fishing lure (2c) wherein the line (14) is a section of leader that has first and second ends (unnumbered). The first end is attached to the tail (10) of the lure and the second end defines a point of attachment for attaching a user's rod or reel thereto.

In regards to claim 22, Brokaw discloses a fishing lure (2c) further comprising a hook (24) attached to the lure body (unnumbered).

Regarding claim 23, Brokaw discloses a fishing lure further comprising a hook (24) attached to the line (14).

In regards to claim 24, Brokaw discloses a method of fishing using the lure (2c) of claim 18 to catch fish (see col 3, lines 49-75).

Regarding claim 26, Brokaw teaches a fishing lure (2c) wherein the artificial bait body (unnumbered) is an artificial shrimp body (see col 1, lines 30-34).

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In regards to claim 27, Brokaw discloses a fishing lure (2c) further comprising a line (14) passing from the tail (10) of the artificial shrimp body through the tube means (unnumbered).

In regards to claim 31, Brokaw teaches a fishing lure (2c) wherein the artificial bait body (unnumbered) is an artificial shrimp body (see col 1, lines 30-34) and the tube means (unnumbered) is a tube for allowing a line (14) to pass from the tail (10) of the artificial shrimp body through the tube (unnumbered). See Figure 2 above.

Regarding claim 32, Brokaw discloses a fishing lure (2c) further comprising a line (14) passing from the tail (10) of the artificial shrimp body through the tube (unnumbered).

In regards to claim 33, Brokaw discloses a fishing lure (2c) wherein the artificial bait body (unnumbered) is an artificial shrimp body (see col 1, lines 30-34) and includes whiskers.

Regarding claim 34, Brokaw teaches a fishing lure (2c) further comprising a line (14) passing from the tail (10) of the artificial shrimp body (unnumbered) through the tube means (unnumbered).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,173,524 to Kinchen, Sr. in view of U.S. Patent No. 5,924,236 to Preston.

In regards to claim 9, Kinchen, Sr. teaches a float (10) slidably received on a rod (8). Kinchen, Sr. teaches a spring means to impart motion to the float (10) instead of magnets. However, Preston teaches a fishing apparatus having a first magnet (14) and a second magnet (24), aligned in such a manner that they repel one another. Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to modify the float, taught by Kinchen, Sr., to include magnets in lieu of a spring, as taught by Preston, in order to construct a long-lasting float capable of imparting life-like motion to a fishing lure.

Claims 28, 35 and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brokaw in view of Preston.

In regards to claim 28, Brokaw discloses a fishing lure (2c) comprising an artificial bait body having a tail (10) and an opening (50) in the body for allowing a line (14) to pass from the tail (10) of the artificial bait body (unnumbered) through the opening (50). However, Brokaw fails to disclose a sound-making means for making a slapping or clicking noise in order to accurately simulate a live shrimp. U.S. Patent No. 5,924,236, given to Preston, does teach a lure (10) comprising a sound-making means for making a sound similar to the slapping or clicking noise that a live shrimp makes when the tail section of the live shrimp makes contact with its body section. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the lure disclosed by Brokaw, to include the sound-making means, taught by Preston, in order to make the fishing lure more realistic and attractive to fish species.

In regards to claim 35, Brokaw discloses a fishing lure (2c) that has an artificial body resembling a live shrimp body. However, Brokaw fails to disclose a sound-making means for making a slapping or clicking noise in order to accurately simulate a live shrimp. U.S. Patent No. 5,924,236, given to Preston, does teach a lure (10) comprising a sound-making means for making a sound similar to the slapping or clicking noise that a live shrimp makes when the tail section of the live shrimp makes contact with its body section. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the lure disclosed by Brokaw, to include the sound-making means, taught by Preston, in order to make the shrimp lure more realistic and attractive to fish species.

In regards to claim 39, Brokaw, as modified in claim 28, teaches a fishing lure (2c) further comprising a tube means (unnumbered) in the opening (50) for allowing a line (14) to pass from the tail (10) of the artificial bait body (unnumbered) through the tube means (unnumbered). See Figure 2 above.

In regards to claim 40, Brokaw, as modified, teaches a fishing lure (2c) further comprising a line (14) passing from tail (10) of the artificial bait body (unnumbered) through the tube means (unnumbered). See Figure 2 above.

Claims 29-30 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brokaw in view of Preston and further in view of Kinchen, Sr.

In regards to claim 29, Brokaw, as modified in the previous claim by Preston, teaches a lure wherein the sound-making means comprises a lure (11) having a magnet (24) thereon. Neither reference teaches a float having a sound-producing means. However, Kinchen, Sr. teaches a float having sound producing beads (B) and a spring mechanism. The spring

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mechanism of the float is an art-recognized equivalent to the magnets used in the fishing lure, described by Preston. Each mechanism imparts motion to the apparatus in order to bring two objects together to create a clicking sound. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the lure disclosed by Brokaw, to include the sound-making means, taught by Preston, modified by Kinchen, Sr., in order to make the fishing lure more realistic and attractive to fish species.

Regarding claim 30, Brokaw as modified by Preston and Kinchen, Sr., teaches a fishing lure wherein the sound-making means comprises a float means (10- Kinchen, Sr.) slidably received on a rod means (8 - Kinchen, Sr.). The sound-making means also comprises a first magnet (24 Preston) attached to the float means and a second magnet (14 Preston) attached to the rod means (16). The first (24) and second (14) magnets are aligned such that they repel one another.

In regards to claim 36, Brokaw, as modified in the previous claim by Preston, teaches a lure wherein the sound-making means comprises a lure (11) having a magnet (24) thereon. Neither reference teaches a float having a sound-producing means. However, Kinchen, Sr. teaches a float having sound producing beads (B) and a spring mechanism. The spring mechanism of the float is an art-recognized equivalent to the to the apparatus in order to bring two objects together to create a clicking sound. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the lure disclosed by Brokaw, to include the sound-making means, taught by Preston, modified by Kinchen, Sr., in order to make the fishing lure more realistic and attractive to fish species.



Regarding claim 37, Brokaw as modified by Preston and Kinchen, Sr., teaches a fishing lure wherein the sound-making means comprises a float means (10- Kinchen, Sr.) slidingly received on a rod means (8 - Kinchen, Sr.). The sound-making means also comprises a first magnet (24 Preston) attached to the float means and a second magnet (14 Preston) attached to the rod means (16). The first (24) and second (14) magnets are aligned such that they repel one another.

Regarding claim 38, Brokaw as modified by Preston and Kinchen, Sr., teaches a fishing lure wherein the sound-making means comprises a float (10- Kinchen, Sr.) slidingly received on a rod means (8 - Kinchen, Sr.). The sound-making means also comprises a first magnet (24 Preston) attached to the float means and a second magnet (14 Preston) attached to the rod means (16). The first (24) and second (14) magnets are aligned such that they repel one another.

### *Response to Arguments*

4. Regarding claim 18, the lure – at 2c in the Brokaw reference US 3543430 is positioned in a horizontal position in the water during use as seen in figure 4 and column 3 lines 48-75 and column 4 lines 1-2. Further, the tube – at 50 of Brokaw is weighted, in that the tube – at 50 has a weight associated with it which when added to the lure – at 6-12 increases the weight of the lure assembly – at 2c. Applicant states that a tube such as the tube – at 50 of Brokaw, being made from metal or plastic could not be weighted, but applicant does not state why a metal or plastic tube is not weighted and therefore it is unclear to the examiner to why the applicant believes a metal or plastic tube having a tangible weight associated with it, is not weighted.

Regarding claim 33, as seen in column 1 lines 30-34 of Brokaw, the lure can be shaped to resemble a shrimp and therefore it is inherent that the lure has whiskers in that live shrimp have whiskers/antennae.

Regarding claim 9, the Kinchen, Sr. reference US 6173524 does disclose a sound-making device in that the beads – at B located inside the float as seen in figures 1-2 are allowed to contact one another and therefore make noise upon contact – as seen in figure 2. Further, using the magnets – at 14 and 24, as disclosed by the Preston reference US 5924236 to replace the springs – at 20 of the Kinchen, Sr. reference would have been obvious to one of ordinary skill in the art in that the springs and magnets are used for a similar purpose of imparting movement to portions of the assemblies with the Kinchen, Sr. reference providing a suggestion to be combined with other devices as seen in column 6 lines 34-40 and the motivation to combine the references being found in the Preston reference in column 2 lines 64-67 and column 3 lines 1-3.

Regarding claim 28, the Preston reference does provide a suggestion for modifying the disclosed invention as seen in column 3 lines 3-12. Further, the Preston reference provides motivation to be combined with another reference as seen in column 2 lines 64-67 and column 3 lines 1-3.

Regarding claims 29-30 and 36-38 the motivation to combine the Brokaw, Preston and Kinchen, Sr. references is found in column 2 lines 64-67 and column 3 lines 1-3 of the Preston reference as seen in reference to claim 28 above and in column 6 lines 9-27 of the Kinchen, Sr. reference.

### ***Conclusion***

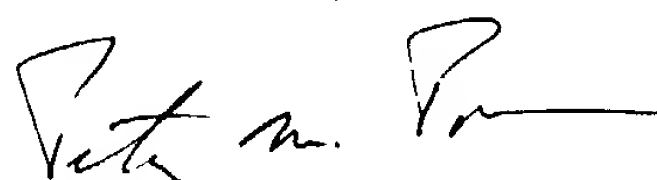
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5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

5/13/04